IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21st DAY OF MARCH, 2019

BEFORE

THE HON'BLE MRS.JUSTICE S.SUJATHA

W.P.No.11932/2019 (T – RES)

BETWEEN :

M/s SRI SAI BALAJI DIGGERS
NO.266, 15TH CROSS,
SRINIVASA NILAYA,
NEAR GAYATHRI TEMPLE,
BASAVANAPURA MAIN ROAD,
DEVASANDRA, K.R.PURAM,
BENGALURU-560 036
REP BY PROPRIETOR
SUBRAMANI RAJU
R/AT NO.266, 15TH CROSS,
SRINIVASA NILAYA,
NEAR GAYATHRI TEMPLE,
BASAVANAPURA MAIN ROAD,
DEVASANDRA, K.R.PURAM,
BENGALURU-560 036. ...PETITIONER

(BY SRI V.G.S.NARAYANAN, ADV.)

AND :

1. STATE OF KARNATAKA
   DEPARTMENT OF FINANCE (GST WING)
   REP. BY ITS SECRETARY,
   VIDHANA SOUDHA,
   BENGALURU-560 001

2. THE COMMISSIONER OF STATE TAX
   VANIJYA TERIGE KARYALAYA,
   GANDHI NAGAR, BENGALURU-560 009.

3. THE JOINT COMMISSIONER OF
COMMERCIAL TAXES (VIGILANCE)
3RD FLOOR, VTK-2,
KORAMANGALA,
BENGALURU-560 047.

4. THE COMMERCIAL TAX OFFICER
VIGILANCE 08, 3RD FLOOR,
VTK-2, KORAMANGALA,
BENGALURU-560 047. ...RESPONDENTS

(BY SRI VIKRAM HUILGOL, HCGP.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED SEIZURE ORDER PASSED BY THE R-4 ON 13.02.2019 AS ILLEGAL, ARBITRARY AND UNTENABLE; ANNEXURE-A.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has challenged the seizure order passed by the respondent No.4 dated 13.2.2019 under Section 129(3) of the Central Goods and Services Tax Act, 2017 ('Act' for short).

2. The petitioner is engaged in the business of providing earth moving services in the name and style of 'Sri Sai Balaji Diggers'. It is contended that an e-way bill bearing No.1910 8302 4307 was generated by the

petitioner for the work order issued by M/s Damodar & Co. from 20.11.2018 to 31.01.2019 and the excavator was transported by vehicle bearing Registration No.KA 01 AG 6219 of M/s Gods Gift Transportation. It transpires that, at 11.20 p.m. on 4.2.2019 the said vehicle was intercepted by the competent Authority and it was noticed that the e-way bill was not matching and accordingly the respondent No.4 issued FORM GST MOV-06, the order of detention under Section 129(1) of the Act and thereafter notice under Section 129(3) wherein, the petitioner was directed to pay the penalty amount of Rs.5,76,000/- (Rupees five lakhs seventy six thousand only). Subsequently, an order was passed quantifying the tax/penalty amount of Rs.5,18,400/- (Rupees five lakhs eighteen thousand four hundred only).

3. The petitioner has preferred an appeal against the said order passed by the respondent No.4 before the Appellate Authority and paid 10% of the disputed penalty/ tax and requested the respondent No.4 to release the

vehicle on the ground that an appeal has been filed under Section 107 of the Act, but in vain. Being aggrieved, this writ petition is filed.

4. Learned counsel Sri.V.G.S.Narayanan for the petitioner would submit that the transaction is a service transaction which is not amenable to tax under the provisions of the Act. Indeed the correct e-way bill No.1511 0221 3149 dated 4.2.2019 generated at 9.51 p.m. was furnished by electronic media i.e., whats app by the petitioner to the mobile number of respondent No.4. The respondent No.4 failed to consider the same and in utter violation of the Circular issued by the Central Board of Indirect Taxes and Customs GST policy wing bearing No.64/38/2018-GST dated 14.09.2018, proceeded to pass seizure order quantifying the tax/penalty of Rs.5,76,000/-. The seizure of the excavator would result in cancellation of the work orders for not carrying out the work within the prescribed time. Hence seeks for release of the goods and the conveyance.

5. Learned counsel Sri.Vikram Huilgol appearing for the Revenue justifying the impugned order submitted that in view of the appeal preferred by the petitioner, the Appellate Authority is bound to examine the genuineness of the pleadings made inasmuch as the mismatching of e-way bill. In such circumstances, initiating the parallel proceedings by the petitioner by filing writ petition has to be discouraged.

6. I have considered the arguments of the learned counsel for the parties and perused the material on record.

7. It is the fervent plea of the petitioner that the goods and the conveyance has been detained by the respondent No.4 contrary to the Circular instructions issued by the Central Board of Indirect Taxes and Customs GST Policy wing dated 14.9.2018. The grounds urged by the petitioner being mixed questions of facts and law, the appeal has been rightly preferred by the petitioner and the

same is pending adjudication before the Appellate Authority. 10% of the disputed tax/penalty amount is already deposited by the petitioner. In such circumstances, without going into the merits or demerits of the case, this Court finds it appropriate to direct the Appellate Authority to dispose of the appeal in accordance with law after hearing the parties, in an expedite manner, in any event, preferably within a period of two weeks from today. Ordered accordingly.

8. It is needless to mention that the petitioner is at liberty to do the daily inspection and maintenance of the excavator and conveyance detained by the respondent No.4 till the release of the same.

With the aforesaid observations and directions, the writ petition stands disposed of.

Sd/-
JUDGE

Dvr: